

Telecommunications Competition: August 2004

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Comments and discussion took place on August 25, 2004 with Jessica Rosenworcel, later in the day with Daniel Gonzalez. Similar discussions took place on August 26, 2004 with Wire Line Competition Staff: Gail Cohen, Jeremy Miller, Ian Dillner Marcus Maher and Russell Hanser.

1. Three Primary Messages.

- a. The 1996 Telecom Act gave the RBOCs long distance entry if they opened up the local service monopoly to competition. **UNE-P is the vehicle the RBOCs used to prove their monopolies were open to competition.**
- b. Local service competition will die without definitive action to secure it. **The consequences are HIGHER rates and FEWER choices for the consumer, layoffs at numerous small CLECs.**
- c. If UNE-P is eliminated, scaled back or priced above TELRIC **then SBC's approval to enter the Long Distance business must be retracted.**

2. Milestones of Superior Spectrum.

- a. Began with purchase of small paging company in 1995. Annual revenue less than \$200,000.
- b. Began offering long distance service and call center services in July of 1997.
- c. Became cash flow positive in late 1999.
- d. Turned an annual profit for the first time in 2000.
- e. Began offering local service in March of 2003.
- f. Current annual revenue forecast of \$4 million and projected profit for fifth year in a row. **Annual profit has never exceeded \$200,000.**

3. The 1996 Telecom Act.

- a. A key provision of the Act was to grant SBC entry into the long distance when it met a 14 point checklist proving its local monopoly was open to competition.
- b. SBC gained LD entry in Michigan in mid 2003. **Since SBC has gained long distance entry, they have waged an aggressive campaign to turn back the clock on local service competition.**
- c. SBC argues they should not be required to give CLECs access to their network, that CLEC should build their own network. **SBC uses the networks of numerous other carriers to complete calls, particularly long distance calls. Therefore, one of its primary arguments is hypocritical and fundamentally flawed.**
- d. SBC's approach is multifaceted: Non stop lobbying, a massive PR campaign, political pressure on regulatory agencies and numerous lawsuits challenging rules promoting competition. SBC is relentless in all jurisdictions, local, state and federal.
- e. A change in philosophy at the FCC and in the White House has played into SBC's strategy very nicely.
- f. **SBC's success at manipulating the intent of the 1996 Telecom Act is amazing and very real consequences to the customer are disturbing.**

4. Rates for Wholesale (UNE-P) Service in Michigan.
 - a. Rates set using TELRIC and/or TSLERIC methods.
 - b. Switch Features (caller ID and etc.) are essentially inseparable from the cost of the basic switch. Due to computerization, basic switches purchased are feature rich at no additional cost to the carrier. **Therefore, the full Feature switch cost is in the basic line retail rate** and the Feature revenues are pure, additional profit.
 - c. Retail Feature rates are not regulated and thus the major source of SBC's revenue.
 - d. UNE-P rates were determined using the same methodology (TELRIC and/or TSLERIC) therefore, the UNE-P rates for a line with no features is the same as a line with that includes all features. **Feature pricing is the primary price differentiator between CLECs and SBC.**

5. Local Service Competition will Die if the Current Trend Continues.
 - a. The FCC began backsliding on rules promoting competition with the 2002 triennial review. (The primary issues center around platforms developed to facilitate the use of SBC facilities by competitors in a wholesale for resale manner. Two of the primary platforms being debated are UNE-P and EELs.)
 - b. Then, the USTA II lawsuit received a successful ruling challenging the legality of certain FCC rules to promote competition.
 - c. The Solicitor General, the White House and the FCC refused to promote sending the case to the Supreme Court. (The FCC's Commissioner Martin, a Republican appointee, changed his position on the issues. Up to that point he had been mostly siding with the two Democrats on competitive issues.)
 - d. On July 8, 2004, the FCC eliminated the 'pick and choose rule' another rule favorable to CLECs and one the RBOCs have successfully fought to have eliminated. Predictably, the FCC was divided along party lines (3-2) when voting to remove the rule.
 - e. Generally, the intent of the '96 Telecom Act is being gutted by the current Administration. Legislative action or intervention seems necessary to enforce the intent of the '96 Act in order for competition to be preserved. **The current instability and backsliding toward the old monopoly environment will have serious and undesirable consequences. If SBC gets its way the result will inarguably be fewer competitive choices and higher prices for the consumer.**